



## Intel figures downplay spy provision

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Senate Intelligence Committee Chairwoman Dianne Feinstein (D-Calif.) and the broader intelligence community are pushing back on the assertion that an authorization bill approved last week expands U.S. authority to collect Americans' communications.

Advocates for the bill say the disputed provision tucked within it actually limits the government's ability to retain information for more than five years.

Reform advocates and even Edward Snowden, the former NSA contractor whose leaks last year sparked the surveillance debate, gave the intelligence community the benefit of the doubt when discussing section 309 of the Intelligence Authorization Act.

"Nothing in Section 309 authorizes any intelligence collection [or] acquisition at all," a Senate Intelligence Committee aide said. "The only thing the section does is require new procedures governing the information the [intelligence community] already collects."

"I don't know why people are misreading this as if it gives authority to NSA," Robert Litt, general counsel for the Office of the Director of National Intelligence, told an audience at the Cato Institute on Friday. "It does not."

The offices of Democratic Sens. Mark Udall (Colo.), Ron Wyden (Ore.) and Martin Heinrich (N.M.) — all proponents of surveillance reform in their positions on the Intelligence Committee — did not respond when asked if they had any objections to the provision.

Rep. Justin Amash (R-Mich.) raised warnings last week, arguing the provision "grants the executive branch virtually unlimited access to the communications of every American."

He sent House members a "Dear Colleague" letter asserting the bill "provides the first statutory authority" for the spy community to collect and retain Americans' communications without a court order or subpoena.

His criticism was centered on section 309, titled, "procedures for the retention of incidentally acquired communications."

The provision would restrict the government from keeping communications collected without a court order or subpoena for more than five years if the collection was "reasonably anticipated to result in the acquisition of a covered communication to or from a United States person."

There are a number of national security exceptions to the provision as well.

While Amash acknowledged the "weak limits" on retention, he asserted the bill would tacitly give Congress's approval to collection that has, so far, only been authorized by executive order — specifically, executive order 12333. He said the retention limits would be largely unnecessary because the intelligence community already imposes them on itself.

The 12333 executive order, dating back to the Reagan administration, authorizes the collection of electronic foreign communications. While Americans can't be targeted without a court order, their information can be inadvertently swept up in other foreign investigations.

Litt pushed back hard on Amash.

"It absolutely does not do what the people have said it does. It does not give any authority to the NSA to do anything," he said.

"12333 collection has existed for a long time; Congress has been fully aware of it," Litt added. "The point is, this doesn't tell NSA you can do something you couldn't do before. This simply says, 'if you do what you are already doing, you have to have restrictions on it.'"

At the same Cato conference Friday, Snowden said advocates would have to hold Litt to his word.

"So if we are to have any faith in our institutions, we have to assume that this will be accepted, and that his statements can be accepted and relied upon," Snowden said.

"If that is the case, then let's go with that. Maybe it does just restrict the authorities but not authorize them," he added.

The Senate approved the bill last week by voice vote. It passed the House, but 100 members opposed it when Amash called for a roll call vote.

His warnings, while unsuccessful in killing the bill, appeared to make an impression. About 40 more members opposed the bill last week compared to a similar authorization bill earlier this year.

The House version of the bill did not originally include the contentious language, and Amash said it was inserted the day before the vote.

"That is no way for Congress to address the sensitive, private information of our constituents," he said.

The American Civil Liberties Union also does not read the bill as a congressional authorization of the executive order, though it did note the inadequacy of the retention restrictions.

Neema Singh Guliani, legislative counsel for the group, said Congress should nonetheless clarify the legislative language to avoid misinterpretation. She said Amash is right to be vigilant, "given our history."